



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 20, 1998

Mr. Wil Galloway  
General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR98-1015

Dear Mr. Galloway:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0419 (1998). Your request for reconsideration was assigned ID# 114825.

The Texas Department of Agriculture (the "department") received a request for information relating to five incident investigations. In Open Records Letter No. 98-0419 (1998), this office concluded in part that the department could not withhold certain factual information as attorney work product under section 552.111 of the Government Code. You contend that our decision in Open Records Letter No. 98-0419 (1998) is in conflict with our decision in Open Records Letter No. 98-0420 (1998), in which we concluded that the department could withhold similar facts under section 552.111 as attorney work product.

You argue that the factual summaries of department investigations are non-neutral recitals of facts and, therefore, protected as attorney work product under section 552.111. We disagree with your assertions that every factual summary of department investigations is a non-neutral recital of facts. The application of an exception to disclosure under the Open Records Act must be determined on a case-by case basis. *See* Open Records Decision No. 485 (1987). We have compared the documents submitted for our review in both requests for rulings. We believe that the summaries at issue contain both neutral and non-neutral facts. Furthermore, we believe that our conclusion in Open Records Letter No. 98-0419 (1998) is substantially correct regarding those facts that the department may not withhold as attorney work product. Our conclusion in Open Records Letter No. 98-0420 (1998) does not stand for the presumption that all case summaries of the nature at issue in this request are considered non-neutral recitals of fact. Thus, if you wish to withhold this type of information in response to future requests for documents of this nature, you must explain to this office in each case whether the factual information reveals an attorney's mental impressions or thought processes. *See* Open Records Decision No. 647 (1996).

We, therefore, affirm Open Records Letter No. 98-0419 (1998). If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent than the last name "DeHay".

Loretta R. DeHay  
Deputy Chief  
Open Records Division

LRD/rho

Ref.: ID# 114825

Enclosures: Submitted documents

cc: Mr. R. Wesley Tidwell  
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(w/o enclosures)